

DATE: December 20, 2007

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In re:)	
)	
-----)	ISCR Case No. 07-01979
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
CLAUDE R. HEINY**

APPEARANCES

FOR GOVERNMENT

Alison O'Connell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had two debts, one she has paid and the other covered by insurance. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is granted.

STATEMENT OF THE CASE

On July 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding¹ it is clearly consistent with the national interest to grant or continue a security clearance for

¹Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to financial considerations security concerns.

On August 17, 2007, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated September 26, 2007. Applicant was sent a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

On October 19, 2007, Applicant responded to the FORM. Department Counsel did not object to the material. Applicant's response was admitted into the record. On November 2, 2007, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security concerns based on financial considerations. After a thorough review of the record, I make the following findings of fact.

Applicant is a 48-year-old aircraft mechanic who has worked for a defense contractor since January 2004, and is seeking to maintain a security clearance.

During the past eight years, Applicant's husband had health issues. In 1998, Applicant's husband was unable to work for several months due to his illness. During his illness, Applicant worked two or three jobs attempting to make ends meet. (Item 4) The SOR lists two charged off accounts. The first debt is a \$11,832 credit card obligation (SOR 1.a). Applicant contacted the creditor and settled this debt, paying \$1,200 as evidenced by an August 2007 letter. (Item 4) The balance was interest and finance charges incurred during the last eight to ten years on the original debt. Applicant had been unsuccessful in her previously attempting to work with the collection agencies to pay this debt. The debt is paid and has a zero balance. (Item 4)

Applicant's February 2006 credit bureau report (CBR)(Item 9) lists two accounts with this creditor with different account numbers. However, the creditor does not appear on Applicant's more recent CBRs of June 25, 2007 (Item 4), the June 28, 2007 (Item 7), or the March 2007 (Item 8).

In March 2001, Applicant purchased a car for \$13,717. In August 2003, Applicant was involved in an accident in which the vehicle was totally destroyed. At the time of the accident, \$7,000 was owed on the vehicle. Although Applicant had full insurance on the vehicle, the insurance company offered payment of only \$3,000, which reflected the salvage value of the car. A week prior the accident, in anticipation of trading the vehicle, Applicant had it appraised and it was valued at \$8,200. The book value on the car was \$7,000. (Item 4) The SOR alleges \$4,000 is owed.

The insurance company appraiser told Applicant she did not have to accept the \$3,000 offer, so she did not accept it. Time passed and she assumed the insurance company had paid the creditor the full value due and owing on the vehicle. However, the unpaid balance was reported as a loss by the credit grantor. (Item 9) Years later, Applicant discovered, from a credit report, the creditor charged off \$4,306. The SOR alleges the debt was charged off in July 2003.

Federal law mandates an original creditor must charge-off an account when no payments have been received for a certain period of time. The state statute of limitation for debt collection in Applicant's state is four years. The statute of limitation applies only to litigation action and does not mean the debt is no longer owed or has been erased. The passage of the Statute of Limitation bars a creditor from using litigation to collect a debt. The debt remains on the credit report for up to seven years and in some case the public record can remain for 10 years.

POLICIES

The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, dated August 2006, sets forth Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F (Financial Considerations).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt

² ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant owes approximately \$16,000 on two debts. Disqualifying Conditions (DC) 19(a) "inability or unwillingness to satisfy debts" and 19(c) "a history of not meeting financial obligations," apply.

In her answer to the SOR, Applicant stated she had paid the debt listed in SOR 1.a. Having stated a debt has been paid is equivalent to denying an allegation. The burden is then on the Government prove the allegation. Government indicates there are two accounts with this creditor and submitted Applicant's February 2006 CBR that lists the two accounts. However, the record contains three more recent CBRs, none of which shows a debt due the creditor. The debt does not appear on her March 2007 CBR nor on either of her two June 2007 CBRs. Providing a single, older CBR does not prove the debt is yet owed.

Mitigating Condition MC 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," applies. Applicant submitted an August 2007 letter indicating the debt owed the creditor in SOR 1.a. had been paid. It is my experience that credit collection agencies are reluctant to provide any favorable written information about payment of a debt. In this case, the collection provided a letter indicated Applicant paid her account. It would be unusual for a collection agency to provide such a letter if Applicant owed additional monies to the same creditor. A collection agency withholds all favorable information until the entire debt with a given creditor has been paid or settled. Based on the more recent CBRs and the practice of collection agencies, I find Applicant has paid the creditor listed in SOR 1.a.

I find MC 20(b) "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances," applies to the car debt. Approximately \$4,000, the unpaid balance on a car loan, was reported as a loss by the credit grantor. She had insurance on her car. A week before the accident the car was

appraised at \$8,000. After the accident, the insurance company told her it is only worth \$3,000. She disputes owing anything. She learned her insurance company failed to pay off the car years after the event.

Applicant's husband suffered from illness and Applicant worked two or three jobs to make ends meet. This was a condition beyond her control. Taking extra jobs shows she acted responsibly under the circumstance.

A person buys insurance to protect themselves and others from economic loss and medical costs should an accident occur. Following an accident, some insurance companies will offer less than the true fair market value of an insured vehicle. Applicant maintained insurance to pay for the vehicle if it was in an accident. She has a legitimate dispute about this debt. The Government argues Mitigating Condition (MC) 20 (e)³ does not apply because Applicant failed to document the basis of the dispute. I find her explanation to be a reasonable and plausible explanation even without written documents.

Additionally, the debt exceeds the state statute of limitations. This does not mean Applicant no longer owes the debt, only that the creditor can no longer bring litigation to enforce the debt. Failing to pay this debt does not show an inability by Applicant to live within her means. It may show an unwillingness to abide by rules and regulations in that people should pay their just debts. However, when one has insurance to pay the obligation in the event of an accident and the insurance company refuses to make full pay, this does not show an unwillingness to abide by rules and regulations. The amount of the debt coupled with the passage of the statute of limitation indicates Applicant is not financially overextended or at risk of having to engage in illegal acts to generate funds. It would be unusual for someone to engage in illegal or unethical acts to generate funds to pay a debt that is no longer enforceable. Additionally, Applicant is not financially over extended by a \$4,000 debt.

While the record contains information addressed in one adjudicative guideline, consideration such also be given to information bearing on the whole person. The adjudicative process must include examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Therefore, I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

On balance, the record before me support a conclusion Applicant has mitigated the security concerns.

FORMAL FINDINGS

³"The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue."

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Claude R. Heiny
Administrative Judge